

Mortgage Broker Practices Act Rulemaking
Panel Meeting Minutes
April 13, 2006

Panel members present: Chuck Cross, Catherine Mele-Hetter, Laura Kiel, Jeffrey Lorsch, and Adam Stein

Absent: Jeff Berglund and Rich Bennion

1. Welcome and Introductions

Chuck introduced the panel and other DFI staff present.

2. Recap of Meeting Format and Protocols

Chuck reminded the audience to sign in on the attendance sheet, and sign up on the public comment sheet if they want to make comments. At the appropriate time, they'll be asked to come to the microphone, state their name, and give their comments.

All meeting information will be posted on DFI's website, www.dfi.wa.gov. The best way to make your comments is through the comment form on the website. Second best, is to submit written comments. Oral comments are okay, but the preferred method is through our website.

3. Document Status Report - projected on TV monitors

Deb Bortner went through the "MBPA Rules Outline" and identified all the sections we anticipate at this time. This first outline will be a reminder for all the sections we will address. The questions in red text are questions we have come up with so far.

Laura Kiel clarified that the Examination Sub-Panel refers to examinations/audits, not loan originator test. We will try to be clear about exam vs. test in the rules language.

The Panel reviewed the entire outline and assigned sections to one or more Sub-Panels. Catherine Mele-Hetter asked how we'll handle it when more than one Sub-Panel is assigned to the same section. Chuck said he'll attend most of the Sub-Panel meetings, so he'll know, and he'll make sure the appropriate Sub-Panel works on it or make sure there is coordination.

Sub-Panel Assignments:

- A. Purpose, Scope and Coverage – Misc.
- B. Definitions – All
- C. Exemption From Licensing – Licensing and Misc.
- D. Mortgage Broker Licensing – Licensing and Misc.
- E. Loan Originator Licensing – Licensing and Misc.
- F. Out of State Mortgage Brokers and Loan Originators – Misc. and Licensing
- G. Office Locations – Misc. and Licensing
- H. Mortgage Broker Branch Office Licensing – Licensing and Misc.

- I. Designated Brokers – Licensing and Misc.
- J. Mortgage Broker License Application – Licensing
- K. Mortgage Broker Branch License Application – Licensing
- L. Loan Originator License Application – Licensing
- M. Exempt Mortgage Broker Designation Application – Licensing
- N. Testing of Designated Broker and Loan Originator – Licensing
- O. Continuing Education – Licensing and Misc.
- P. Transfers by Licensees; Change in Principal or Designated Broker – Licensing and Misc.
- Q. Disclosure of Significant and Adverse Developments – Misc. and Licensing
- R. Prohibited Practices – Misc., Enforcement and Examination
- S. Disclosure Requirements – Misc., Examination and Enforcement
- T. Mortgage Broker and Loan Originator ~~Fees~~ Compensation or Gain – Misc., Enforcement and Examination. Changed the name.
- U. Contracts – Misc.
- V. Trust Accounting (or possibly Funds Held in Trust) – Misc. and Examination
- W. Record Keeping Requirements – Examination, Enforcement and Misc.
- X. ~~Fees and Costs~~. Changed the name – Department Fees and Costs – Misc., Licensing and Enforcement
(investigation fees, application fees, annual assessment fees, etc.)
- Y. Annual Reporting – Misc., Examination and Licensing
- Z. Director and Agency Powers – Misc., Examination and Enforcement
- AA. Mortgage Broker Commission – Misc.
- AB. Other Requirements – Misc. for now.
(Other items might fall under this.)
- AC. ~~Agency~~ Department Guidance and Technical Assistance (see RCW 35.04) – Misc. and Examination for now. Changed the name.
- AD. Forms – All
(Don't know yet.)

4. Comments and Suggestions for Panel Consideration

Deb said the Panel and DFI staff have responded to some of the comments already. Deb has included comments made at the March 30, 2006, Panel meeting also.

Catherine reminded the Sub-Panels to document their discussions of why comments were incorporated or why they were not included.

Deb said each Sub-Panel will get a copy of the appropriate comments assigned to their Sub-Panel.

Adam Stein asked if we could dismiss any comments today if that was appropriate. The group agreed that would be appropriate, as long as we noted and documented the comment was discussed.

Comments prior to April 10, 2006

1. Comment:

Broker (s) shall not lease or charge a monthly fee to newly licensed loan originator for the first two years.

I personally have learned of this creative business operation thru Real Estate Service Brokers, and I hope DFI can adapt a rule that will discourage this type of business arrangement with newly licensed loan originator (s).

Decided to strike this comment. Adam said this is common in the real estate world. It may be to the advantage of the loan originator. That is one of the features of the relationship. Chuck said this comment exceeds our statutory authority. Adam moved that we strike this comment. Laura seconded it.

2. Comment:

We would like to request consideration for a reciprocal agreement between Washington and Oregon, since Oregon law already requires Loan Officer licensing and continuing education to one of the highest standards in the industry.

Jeffrey Lorsch said we have state laws that will be different than other states. Adam agrees; our laws are more stringent. Maybe there could be a reciprocal agreement for continuing education.

Licensing Sub-Panel.

3. Comment:

If a loan originator has 20 years of experience, he suggests a credit in lieu of taking a class for licensing purposes.

He suggests some type or kind of exemptions for us "old timers" who have been originators for 20 years or more with no problems or lawsuits, etc.

Laura said we defined that we did not want this. Catherine said we don't have the statutory authority to exempt anyone. Laura added that you don't need a class to take the first test. Jeffrey and Adam agreed that things change, and we want licensees to keep current.

4. Comment:

a. I would like to recommend that WA not follow suit like the Designated Broker requirements and force loan officers to have to travel to WA to take the test. There are allot of creditable education and testing facilities throughout the country that can administer proctor exams. I would highly recommend Promissor. I would also hope that this new law would require these agents to have continuing education as well.

[Licensing Sub-Panel.](#)

b. I would also like to suggest that WA revisit the Bond requirements for the Brokers and Lenders. As a licensed Mortgage Broker in your state I have to carry a \$60,000 bond for all my LO's and offices. This in my opinion can and should be reduced and or eliminated with the requirements of agent licensing and the consequence of an agent having their license revoked for perpetrating illegal activities and the fines you should be able to impose against the agents for violations of statutory laws.

[Adam commented that it wasn't our intention to raise or lower the bond requirement. Jeffrey said the purpose of the bond is to cover the client. Is that sufficient? Adam said if consumers are adequately covered now, we don't want to touch it.](#)

[Chuck said the data/history is insufficient. We don't have data.](#)

[Considered and struck from further review.](#)

c. I also hope that this same new law will also be effective towards the banker's loan officers. These individuals act in the same capacity and conduct the same business as loan brokers.

[Laura said bank loan officers are exempt from this law.](#)

5. Comment:

a. I would like to see new rules in place that require all mortgage lenders to be required to fully disclose the following information in all advertisements, including internet ads:

- Loan Officer or Broker's full name
- Company name (not an unregistered DBA or URL)
- LO's direct telephone number
- Broker's office telephone number
- Broker's office address
- Valid WA Mortgage Broker's license number

This requirement should be similar to the one that Real Estate agents must comply with.

Ads should also include any & all required lending disclosure notices as well.

[Chuck said we need to add "Advertising" to our outline. Add information about official looking advertising and solicitation.](#)

[Misc. Sub-Panel.](#)

b. In addition, Real Estate Agents & Brokers should no longer be allowed to originate loans with out a Mortgage Broker or Loan Officer/Originator

license as mortgage lenders can not perform any duties of a Real Estate Agent/Broker with out said license.

That is covered in the statute, as long as realtors are not compensated. Chapter 19.146.020 (1)(h) specifically sets out when real estate brokers are exempt from the Act. Chapter 19.146.0201 (13) states what realtors can do in the transaction.

Misc. and Licensing Sub-Panels.

6. Comment:

a. Regarding independent status. Truly independent contractor status respects the professionalism and business privacy of the individual. As a consultant one does not divulge their client base one to the other, and the government should not do that without the individual's permission. The broker's get all of the cash flow and other business capitalization benefits by using independent consultants/contractors. Each broker does not have a full suite of capabilities i.e. small apartment buildings, commercial real estate etc. Loan originators may work in one or several of these domains which is to their credit. It is fair to pay the fee for each broker that one may originate loans for. But I believe that is privy information. If the broker wants to take that person on as a captive employee, then they should pay the price of benefits packages, profit sharing etal.

Chuck was confused what they're asking for. Laura said they would like to work for more than one company without the other companies knowing. Jeffrey said having the licensed loan originators on the DFI website, so anyone can look them up has already been addressed. We don't have the authority for the second half of the comment.

b. Regarding license fees --- A sliding scale akin to the fees we pay for registering new cars versus old cars. New loan officers should pay more to buy in. With education and knowledge base testing and a non trivial fee, only the serious minded will step up to the plate, which is as it should be. To be an engineer of professional status for the state, one has to spend a great deal of money and study to get there. Just like a new car license fee is high at the first year. After three years it is pretty much at a maintenance level which is not a bad model, and it would generate a lot more funds for Laura's model. This could be a great source of revenue and be made to be quite fair to the established workers in the field. Thanks for a good show.

Laura doesn't think the \$100-\$125 fee is too much for anybody. This doesn't rise to the same level as an engineering license. Chuck said this Panel is disinclined to develop any kind of a sliding fee scale.

Laura thinks we should strike this from consideration.

7. Comment:

a. In order to make loan originators fees equitable, you could charge to get a license, and then charge a lesser fee to get additional certificates to work for other companies.

Adam said it is already crafted that way.

Licensing Sub-Panel.

b. Supervisory authority – Distinguish between exercised authority or authority retained by definition such as an owner always has authority. What if they choose to delegate it? Are they still responsible?

Misc. Sub-Panel.

8. Comment:

Loan originators should not be allowed to work for more than one mortgage broker.

Laura said this is covered by statute, and we have no authority to change that.

Strike this comment from further discussion.

9. Comment:

We need to address the issue of applying for a new job and not wanting the old broker to have that information vs. working for multiple brokers.

Chuck said we need to be careful, because this is a privacy issue while applying for a new job.

Licensing Sub-Panel.

10. Comment:

He suggests a summary of rights of the borrower be placed in the rules.

Catherine Mele-Hetter said borrower's rights are addressed in federal law. Chuck said they are addressed in our law too.

Misc. Sub-Panel.

11. Comment:

I would like to see it more difficult, maybe more costly, for loan originators to hang their license at more than one location.

Chuck said we had a lot of comments on this issue last week. Adam added that we don't need to punish someone for working for more than one company. Jeffrey said loan originators want the fee as cheap as possible while owners want it as expensive as possible.

Licensing Sub-Panel.

12. Comment:

a. The roving loan originator needs to come at a premium. The point of licensing is to tighten things up and stop some of the issues we're having now.

[Licensing Sub-Panel.](#)

b. The designated broker should be held to a much higher standard on the testing.

[Licensing Sub-Panel.](#)

13. Comment:

He encourages us to only have people take tests within the Washington borders not use a third party to administer the test.

[Licensing Sub-Panel.](#)

14. Comment:

New loan originators without years of experience should have to pay higher fees. Maybe there could be some type of a tiered level for fees based on experience.

[This is being considered already. Duplicate.](#)

[The Sub-Panels will work on the appropriate comments and make recommendations to the Panel.](#)

5. Sub Panel Reports

Licensing Sub-Panel – Adam Stein reported that they met on Friday, April 7 for two hours. They went through the Act section-by-section and decided what to work on. Jeffrey Lorsch added that they will start writing questions.

Enforcement Sub-Panel – Laura Kiel reported that the first meeting will be held April 24.

Misc. Sub-Panel – Laura also reported that the Misc. Sub-Panel will have their first meeting on April 14.

Examination Sub-Panel – Chuck reported for Jeff Berglund. They met on April 6 to go through the 32-page examination manual from top to bottom. That manual is not complete yet, but will be available for the Panel soon. It will be available for everyone after that.

6. Small Business Economic Impact Statement Briefing - Handout

Whittier reviewed and explained the Small Business Economic Impact Statement handout.

We will randomly survey small and large mortgage broker companies to assess the impact of reporting, recordkeeping and other compliance requirements required by the proposed rule. Once we have that information, we'll compile it, and make comparisons between small and large companies.

7. Work Session – TBA

Laura would like dates and deadlines to work from.

Chuck said we will put this project into Microsoft Project Planner. The one firm date we have is August 23, which is when the rules are due to the Code Reviser.

There was some discussion about whether the Sub-Panels should come up with deadlines, or whether the Panel should. Chuck said it is up to the Panel to control the dates.

DFI Sub-Panel leaders will propose a timeline for their projects and present it to the Panel. Jeannette Terry will figure out the quarterly deadlines (see below).

March 30–August 23 = approximately 20-21 weeks. From the first meeting until rules are due to the Code Reviser.

¼ way – 5 weeks = May 4, 2006

½ way – 10 weeks = June 8, 2006

¾ way – 15 weeks = July 13, 2006

Done – 20 weeks = August 17, 2006

Chuck suggested working on testing, continuing education, or who needs a license first.

Laura suggested discussing multiple licenses for one loan originator and fees. That was agreed on.

Chuck prefers charging the same cost for each license. Why should it cost more for one than the other? Chuck reminded everyone that the loan originator fee is to cover the cost of the license as well as examinations and enforcement.

There is a potential that having a loan originator working for more than one company could increase enforcement costs. Currently DFI does not track the locations a loan originator works from. In the future, someone working for three locations will need three licenses. There will be more tracking and more potential for enforcement actions.

Chuck said the annual licensing fee for main offices is the same as it is for branches. That sets a precedent.

Adam prefers that the first license cost more than additional licenses. He wants to be able to justify the costs. He needs to be able to explain that the cost is fair and equitable.

Jeffrey said we don't want to encourage working for multiple companies, but we don't want to penalize anyone either.

\$100-\$125 came from the fiscal note to cover the cost of licensing, examination, and enforcement. We estimated that there are 8,000 loan originators currently.

We don't know if 8,000 is an accurate number of loan originators. Laura asked if DFI can give us a perception/feeling of how this will affect the overall program.

Catherine suggested looking at other states, but Chuck thinks we're the only state allowing loan originators to work for multiple companies.

What if the 8,000 estimate is way off? What if there are 15,000? What if there are less? How will that affect the revenue?

Chuck wants to point out to the Panel and to the industry that his guess is that within the first 6-12 months of the program, the Mortgage Brokers will be screaming at the Department about the number of loan originators operating illegally, and why aren't we doing more about it. His response will be that we could only afford one enforcement attorney.

Adam said he doesn't remember this coming up when they were drafting the bill. Chuck said his enforcement chief just brought this to his attention a few months ago.

Laura asked Whittier to draft a letter to the Panel to justify the \$100-\$125 per license. Whittier said that information is already captured in the fiscal note.

Chuck said that was a good discussion. We need to find out how much we need to fund the program on known numbers. Everything above that would be extra.

8. Public Comments

Michelle Bigliatto –

1. Regarding real estate agents acting as loan originators - There are several dual real estate agents and loan originators in the industry. They receive money from selling, buying, and originating. Is that illegal?

No, the statute allows for it as long as there is proper disclosure if you work for an exempt company, or if you fall under the Act and in the future will be licensed as a loan originator.

2. Comment regarding privacy when you are applying for a new job. There is always a box to check saying "can your current employer be contacted."

Michelle Bigliatto –

She concurs with Adam that we need to justify the cost to all loan originators. Since there isn't a loan originator on the Panel, it could appear to be a dictatorship. She was in favor of tiers, and thinks \$125 would be fine. She suggests we don't punish the masses because of a few bad apples.

Chuck responded to Michelle's comments:

1. This Panel isn't designing the idea that loan originators fund the program. The legislature passed that, and this was fully vetted in front of them.
2. Regarding the make-up of this Panel, the statute dictates what the make-up of the Panel will be. Starting in 2008, we'll add two loan originators to the Commission. The Commission advises the Director on drafting rules. Chuck wanted to add loan originators but was disallowed by statute.
3. The Director is in charge of drafting and implementing rules. We're reaching out and trying to be more inclusive than probably any other agency has been. Hopefully people are feeling included, not excluded.
4. We might be discussing a non-event if there are only a few loan originators working for more than one company.

9. Meeting Schedules

- April 27, from 2-4:30 p.m., Renton City Hall
- May 10, (in conjunction with Commission meeting) from 2-4:30 p.m., Renton City Hall
- June 1, from 2-4:30 p.m., Renton City Hall
- June 15, from 2-4:30 p.m., Renton City Hall
- June 29, from 2-4:30 p.m., Renton City Hall
- July 13, from 2-4:30 p.m., Renton City Hall
- July 27, from 2-4:30 p.m., Renton City Hall

10. Other

Called to order: 2:15 p.m.

Adjourned: 4:45 p.m.